

DECISION - BOARD OF APPEAL CASE NO. 05-16

APPLICANT

JOHANNA AND CHRISTOPHER MALINN

LOCATION OF PROPERTY INVOLVED:

**49 Morningside Drive, Walpole, MA
Walpole Assessors Map 48, Parcel 27
WRPOD Area 1**

APPLICATION:

The grant of a SPECIAL PERMIT under Section 12.C.1 of the Zoning Bylaw to allow an addition with a proposed lot coverage, structures and other impervious of 22.6% which is an increase of the existing non-conforming lot coverages and other impervious of 20.4% and a VARIANCE from Section 6.b.1 of the Zoning Bylaws to allow an addition in a 15,100 lot area and a 12' side yard setback as shown on a certified plan entitled: "Certified Plot Plan located at 49 Morningside Drive, Walpole, MA" drawn by Continental Land Survey, 105 Beaver Street, Franklin, MA., dated June 4, 2015, as may be amended, together with any other Special Permits or Variances the Board deems applicable.

On June 22, 2016 a Public Hearing was held, in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

Matthew Zucker, Chairman
James DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Susanne Murphy, Member
Mary Jane Coffey, Member

VOTE OF THE BOARD:

A motion was made by Craig Hiltz to amend the application from a Variance to an additional Special Permit under Section 9.5.B and 9.4.A of the Zoning Bylaws to allow for an expansion on a non-conforming lot with a pre-existing non-conforming setback.

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Motion seconded by Mr. DeCelle. The vote was 5-0-0 in favor (Zuker, Hiltz, DeCelle, Murphy, Coffey voting); therefore the application is amended to a Special Permit under Sections 9.5.B and 9.4.A of the Zoning Bylaws and hereby granted.

A motion was made by Craig Hiltz to grant the Special Permit under Section 9.5.B and 9.4.A of the Zoning Bylaws to allow for an expansion on a non-conforming lot with a pre-existing non-conforming setback. Motion seconded by Mr. DeCelle. The vote was 5-0-0 in favor (Zuker, Hiltz, DeCelle, Murphy, Coffey voting); therefore the Special Permit under Sections 9.5.B and 9.4.A of the Zoning Bylaws is granted.

A motion was made by James DeCelle and seconded by Craig Hiltz, that the Board grant a Special Permit under Section 12.C.1 of the Zoning Bylaw for an addition with a proposed lot coverage, structures and other impervious of 22.6% which is an increase of the existing non-conforming lot coverages and other impervious of 20.4% to allow an addition in a 15,100 lot area and a 12' side yard setback as shown on a certified plan entitled: "Certified Plot Plan located at 49 Morningside Drive, Walpole, MA" drawn by Continental Land Survey, 105 Beaver Street, Franklin, MA., dated June 4, 2015, as may be amended. The vote was 5-0-0 in favor (Zucker, DeCelle, Hiltz, Coffey, Murphy voting); therefore, the Special Permit under Section 12.C.1 is hereby granted, subject to the following conditions:

- 1) All the construction will be completed according to the plan submitted at the public hearing with a maximum coverage of 22.6%;
- 2) No permits shall be issued until the Town Engineer approves the recharge system.

REASONS FOR DECISION

It is the finding of the Board that the since the Lot was a single family lot, insufficient in regards to lot size, and that only an extension of a non-conforming setback is proposed, that the Application was more appropriate to be filed under Section 9.5.B and 9.4.A of the Zoning Bylaws and that sufficient public notice about the subject matter of the Application existed. The Board found the Applicant was able to meet the requirements of Sections 9.5.B, 9.4.A and 12.C.1 of the Zoning Bylaw to allow the extension and alteration of his existing non-conforming one family dwelling and a non-conforming lot (noting that Section 9.5.B directs an Applicant to file for relief under Section 9.4.A). The Board found that the Lot was an existing non-conforming single family lot and was not being changed. The Board found that the existing side yard setback was existing non-conformance and although it is being extended, such extension was not substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board notes that there was abutters in favor of the Application and none opposed. The Board finds that the resulting house is in character with, and follows the intent of the Residence B/WRPOD Area 1 Zoning District. Accordingly, the Board has determined that the Special Permits requested are warranted.

FURTHER FINDINGS

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the Zoning Bylaw which refers to the granting of the requested special permits;

The Board finds that the proposed extension to a single family dwelling on a non-conforming lot is in harmony with the purposes and intent of the Bylaw. The proposed undertaking meets the criteria as stated in the Walpole Zoning Bylaw and will be consistent with the character of the neighborhood which is residential in nature. As shown on the plan, the proposed construction does not create any new deviations from the Zoning Bylaw and the Bylaw specifically empowers the Board to grant the requested Special Permits to allow the proposed construction.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the proposed undertaking will neither impact the convenience and safety of vehicular and pedestrian traffic within the site nor affect the current conditions on adjacent streets. The volume of traffic will not change as a result of this renovation and will not have a significant impact on Morningside Drive. There should not be any adverse effect to adjacent roads as there are no additional new trips generated and the capacity of the road is sufficient.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that proposed extension and alteration to the existing dwelling on the existing non-conforming lot should not be an adverse effect to the neighborhood or school system. The proposed undertaking is specifically intended to allow the Applicant and his family to remain in their home. The addition is not designed to increase the number of residents. The single family home being residential in nature will have no employees or customers. As such, the Board finds that there is no adverse effect to the neighborhood and that this condition is met.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Applicant is seeking Special Permits under Section 9.5.B, 9.4.A and 12.C.1 of the Bylaw to allow an addition to the dwelling at 49 Morningside Drive subject to conditions imposed by the Zoning Board. There is no buffer zone required. Therefore, the Board is satisfied that this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the proposed extension and alteration to the existing dwelling on the existing undersized lot is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The architectural plans show the house is being renovated in a tasteful manner that is consistent with the size and construction of the other houses in the neighborhood. As such, the proposed extension and alteration of a non-conforming one-family house on a non-conforming lot will not have an adverse effect to the character of the immediate neighborhood. Thus, this condition is satisfied.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning By-Law in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". Clearly, the proposed extension and alterations of the dwelling are consistent with the purpose of the By-Law. The continued residential use will remain the same with the extension and alterations providing for the family living quarters. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the zoning by-law and this condition is satisfied. Further, the expansion is not substantially more detrimental to the water supply because the recharge system from the roof will actually recharge the water on the site from what is currently there.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more

than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.”

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: “A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS



Craig W. Hiltz, Clerk

CH/k:16-19

cc: Town Clerk Engineering Planning Board
 Board of Selectmen Building Inspector Conservation Commission

This decision was made on June 22, 2016 and filed with the Town Clerk on July 5, 2016.